

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Variance  
Application of Janelle Woodfill.

**FINDINGS OF FACT  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on March 11-14, 1997, in the City Hall in Afton, Minnesota. A site visit was conducted on March 11, 1997.

Appearing on behalf of the Applicant, Janelle Woodfill, was Daniel B. Johnson, Meyer and Njus, 5000 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-4121. Appearing on behalf of the Department of Natural Resources (Department or DNR) was David P. Iverson, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127. The record closed with the receipt of the parties' reply briefs on May 7, 1997.

Notice is hereby given that pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner of the Department of Natural Resources shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Ronald Sando, Commissioner of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155.

STATEMENT OF ISSUES

- 1) Has the Applicant met all of the conditions required for the grant of a variance to build decks on her house located within the Lower St. Croix shoreland zone?
- 2) Can the Applicant have a building permit issued in 1991 amended to remove a condition requiring her to remove the detached garage on her property?
- 3) Has the Applicant met all the conditions required for obtaining a building permit to renovate the detached garage on her property?

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In mid-1988, Janelle Woodfill observed property for sale at 4242 River Road in the City of Afton. At that time the property held a summer cottage in a state of disrepair and a separate, two-story garage structure. The cottage was located on a triangular lot with the longest side running along the St. Croix River. River Road travels along the St. Croix River over Applicant's lot by virtue of an easement. The two-story garage structure ("detached garage") is located fourteen feet from River Road on the landward (west) side. A driveway connects the detached garage to River Road. The cottage is approximately eighty feet northwest from the old garage. The cottage is 185 feet from the river at its closest point. The detached garage is closer to the river than the cottage. Immediately behind the cottage is a bluff rising steeply to a height well above that of the cottage. The slope of the bluff is greater than 12 degrees from the horizontal.

2. As part of her inquiry into purchasing the property, Woodfill requested information from Barbara Kallusky, Zoning Administrator for Afton, as to what permits would be required. Kallusky responded that Woodfill would need a lot size variance to do any construction on the lot. Woodfill was informed that the DNR would not allow anything to be done with the detached garage and any new garage would have to be placed no nearer the river than the riverward face of the house. On October 24, 1988, Woodfill filed a "Planning Administrative Form" for the purpose of obtaining a variance from the residential lot size restrictions of the Afton Zoning Ordinance. Exhibit 7. Woodfill described the project as follows:

- Remodel existing cabin
- Add tuck-under garage
- Dormer front of roof
- Bathroom above existing kitchen
- Repair foundation, insulate
- Re-do wiring, heating + plumbing

Exhibit 7.

3. Plans for the construction were submitted at the time of the variance request. The plans consisted of drawings, not to scale, of the expected result of the construction. Exhibit 39. The plans contained notations as to the "existing roof line", "existing rear setback", and "existing front setback" that suggested the height and depth of the cottage were not to be changed. The second story windows were represented to be smaller than the windows on the first story. *Id.* An attached garage is shown on the drawings to the north of the cottage. A driveway is suggested leading up to the garage, but no trees or slope are identified. *Id.*

4. On November 1, 1988, the Afton City Council met as the Afton Planning Commission and recommended approval of the variance request with the following conditions and findings:

- a. the requirements of the County as outlined in Bieraugel's letter of 10-28-88 be followed
- b. the requirements of the scenic river ordinance be met
- c. an easement for road purposes be provided
- d. the DNR see and approve specific plans for the driveway

Findings:

- a. There is a hardship on the land because this lot of record is less than five acres in size.
- b. Nothing can be done with the existing garage.
- c. The proposed tuck-in garage is no closer to the river than the house, so the structure will not become more sub-standard.

Exhibit 8.

5. An outline for the location of a driveway to the new garage showing the location of trees was submitted to the City on November 10, 1988. Exhibit 39.

6. On November 15, 1988, the Afton City Council approved the Applicant's variance request, both accepting the Planning Commission's Findings and adopting the conditions on granting the variance. Exhibit 9. The variance form was issued on November 17, 1988, with the following notation:

**SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS OR RESTRICTIONS:**

Building permit will be issued by Washington County.

All requirements of letter dated 10-28-88 from Bob Bieraugel of Washington County shall be followed.

All requirements of the Scenic River Ordinance shall be met.

An easement to the City of Afton for road purposes shall be provided by the owner.

DNR must approve driveway plan.

Driveway shall meet requirements of Afton Ordinance 301.510 (Driveways).

Height of existing roof shall not be changed.

Exhibit 10.

7. The variance form contained the signatures of the Applicant and the Zoning Administrator. Exhibit 10. Above the signatures was the notation

**WE ACCEPT THE CONDITIONS OF THIS PERMIT. WE UNDERSTAND THAT ANY CHANGES FROM THESE PLANS MUST BE RESUBMITTED FOR APPROVAL.**

Exhibit 10.

8. Woodfill submitted the plans for construction to Washington County for a building permit. The building code inspector made notations on the plans to require fewer windows to meet the Minnesota Energy Code, require a landing and steps at the

front door, and require egress from the second story sleeping room. Exhibit 40. On the egress issue, the notation states “Each sleeping area requires one operable emergency exit window or door (see attached details).” *Id.* The plans also contain the following notation:

NOTE

NO CHANGES TO THE APPROVED PLAN, AS CORRECTED, MAY BE  
MADE WITHOUT PRIOR APPROVAL OF SUCH CHANGES BY THE  
BUILDING OFFICIAL.

Exhibit 40.

10. Washington County conditionally approved the building plans on March 17, 1989. Exhibit 40. Woodfill began construction on the cottage soon after. The DNR received a complaint about the construction work and began an investigation into the construction site. Woodfill filed a mitigation plan for preserving landscaping and rectifying the driveway with the DNR on July 24, 1989. Exhibit 41. For the first time, Woodfill indicated that there would be excavation of the bluff at the rear of the garage. *Id.*

11. On August 1, 1989, Molly Shodeen, Area Hydrologist for the DNR, and Kallusky visited the construction site. The site had large amounts of soil piled around trees on the property, substantial excavation had been done to the bluff where the garage was to be located, and the second floor of the cottage had a door-sized opening above the front door location, facing the river. Exhibit 38. In Shodeen’s opinion, the piling of soil around trees and movement of heavy equipment over the root structures of other trees would kill them. Both Shodeen and Kallusky informed Applicant that the construction on the site was different from what had been described in the plans presented to the City and the DNR. A later visit showed a door on the second floor immediately above a board ribbon of the type appropriate for attaching a second-story deck. Exhibit 38.

12. On August 9, 1989, Kallusky sent Applicant a letter identifying what could be done on the project and the conditions under which that work could continue. Exhibit 11. Terracing would be allowed in front of the house, with a permit obtained from the DNR and a revegetation plan approved by Washington County. *Id.* The excavation done from the “toe of the bluff” would be addressed by the plan. *Id.* at 1. The second story deck would not be allowed if the house was less than 200 feet from the river. *Id.* at 2. The following statement was also included in the letter:

It is unfortunate that this situation occurred, but there is no doubt in my mind or Mr. Shodeen’s (*sic*) that what you represented as your plan for this project held little resemblance to what was done. It is my sincere hope that you understand that the City of Afton and the DNR are deeply concerned that your actions may have done irreparable harm to the trees and landscape and may cause serious erosion problems in the future.

Compliance with these conditions we are requiring of you will hopefully abate those conditions.

Exhibit 11.

13. A "red tag" was issued on the project, which stopped all work on the site until the problems identified could be resolved. On October 18, 1989, Shodeen advised Applicant that DNR's approval of a variance for constructing the garage adjacent to the cottage was premised on the description of the garage as a "tuck-under" and the existence of some excavation done by a former owner. Exhibit 13. The excavation required by the permitted attached double garage would, in Shodeen's opinion, cause further damage to already unstable earth on the slope. *Id.* Shodeen suggested that a one-car garage be built or that the footprint of the garage be moved nearer the river. *Id.* Legal action by the DNR was threatened if Woodfill failed to address the erosion issue. *Id.*

14. Discussions were held between Kallusky, Shodeen, and Woodfill as to what could be done and Kallusky suggested an "after-the-fact" variance that would allow construction of the garage eight feet riverward of its current location. Exhibit 14. The DNR agreed to such a variance, although its usual practice is to deny any variance that moves any part of a structure closer to the shoreline. On November 14, 1989, Kallusky advised the Applicant of the need for an application to obtain the after-the-fact variance. *Id.* Kallusky indicated that retaining the second-story deck Applicant had constructed would also require a variance, but that the DNR was unlikely to go along with such a variance. *Id.*

15. On November 17, 1989, Woodfill filed the application for an after-the-fact variance with the City. Exhibit 15. On November 28, 1989, the Afton Zoning Administration Committee (AZAC) met to consider the after-the-fact variance request. The request was passed to the planning commission with the recommendation that the variance be granted on the garage setback, subject to numerous conditions designed to stabilize the slope against further erosion. Further conditions were recommended to ensure that blueprints of the proposed work be submitted and no changes be made from those blueprints during construction. Exhibit 17.

16. On December 28, 1989, the DNR received the variance application materials. On January 8, 1990, John Stine, Regional Hydrologist for the DNR, offered comments for consideration by the planning commission. Exhibit 18. Stine indicated that the current condition of the bluff warranted moving the garage closer to the shoreline. *Id.* There was no such hardship to justify the second-story deck or landings extending from the front door to the roof of the garage. *Id.* Stine included a drawing showing which stairs and landings were allowable and which were objectionable. *Id.*

17. The planning commission met on January 9, 1990, and considered the variance request. The minutes show that the planning commission was not disposed to grant the after the fact variance. Exhibit 19. The request was tabled to allow more

information to be presented on the slope of the bluff, size of the garage needed, and what erosion control was being put into place. *Id.*

18. Ms. Woodfill submitted information supporting the variance request to the planning commission on January 25, 1990. Exhibit 20. The Applicant acknowledged that the second-story door was not in the original plans, but asserted that the second-story door and deck were required by Washington County for egress. *Id.* The location was selected by the carpentry contractor as “central to the second story floor plan.” *Id.*

19. AZAC met on January 30, 1990, and considered the variance request. A consensus was arrived at that the granting of the setback variance for the garage was the best outcome under the circumstances. Exhibit 22. Kallusky submitted a letter to the planning commission supporting the grant of a variance for the garage to both prevent additional excavation and avoid future erosion. *Id.* Kallusky opposed granting a variance for the second-story deck and suggested moving any desired deck to the south side of the house where no variance is required. *Id.*

20. The planning commission met on February 13, 1990, and recommended that the variance request for the garage setback be conditionally approved. Exhibit 23. The second-story deck request was recommended for denial. Seven conditions were suggested for approval of the variance request, including the following:

\* \* \*

- d. all construction of garage, demolition of detached garage, driveway, retaining walls and reconstruction of the second floor window, addition of second floor egress and landing on the south side of house shall be completed no later than a date to be agreed to by the DNR and SCS, to avoid erosion problems with spring run-off. Applicant shall enter into a development agreement and post a bond in the amount of 125% of the cost of completion of said items.

\* \* \*

- g. In regard to the building to the east, it is understood that no type of repair be done to this building without permission from the City and the DNR and that when the home is occupied, this building shall be removed and the land underneath restored to its natural state.

Exhibit 23.

21. On February 20, 1990, the Afton City Council approved the after-the-fact variance, with conditions. The conditions included removing the detached garage (the “building to the east” referred to at g. above) and restoring the land to its natural state by June 15, 1990. Exhibit 24. The request for a variance for construction of decks, other than the front door landing, was denied. *Id.* A fabric canopy over the front door landing was approved. *Id.*

22. Woodfill was not satisfied with the conditions of the after-the-fact variance and sought to have the City Council remove the condition regarding the detached garage. Exhibit 46. No action was taken to alter the conditions relating to the detached structure. She did not have any landing installed on the house pending the resolution of the dispute.

23. After waiting for some time to resolve her dispute, Woodfill went forward in 1992 with construction of a landing, a first floor deck connecting the landing and the attached garage, and second story deck on the riverward side of the house. Exhibit 36. The landing extends approximately four feet out from the house and six feet wide. Exhibit 36, at 2. The second story deck is the same size as the landing. The landing and second story deck fit within the footprint of the original landing on the house. The first story deck does not fit within the footprint of the original landing. The original landing did not extend higher than the bottom of the front door. Woodfill did not obtain a new permit to construct the decks and landing. The detached garage structure remained in place.

24. Shodeen visited Afton in early 1993 and noted that decks had been constructed and the detached garage was still standing. Shodeen wrote to Alex Wickstrom, the Afton City Administrator, to complain of the violations of the building permit and failure to meet the conditions in the permit that was granted. Exhibit 28.

25. A meeting was held on July 21, 1993, between Shodeen, Wickstrom, Sandy Fecht, Wild and Scenic Rivers Coordinator for the DNR, and Jon Kroschel, Mayor of Afton. Shodeen urged that the City enforce the permit as issued and suggested that the DNR would be taking action if the City did not. Exhibit 29.

26. On November 7, 1994, Woodfill wrote to the City Council to appeal the conditions and limitations on the after-the-fact building permit. Exhibit 49. On November 11, 1994, Woodfill applied for a building permit to repair the detached garage. Exhibit 30. The application stated: "I will complete Permit and Plan check after you approve." *Id.*

27. A memo, dated December 1, 1994, was sent by Wickstrom to Shodeen which stated:

Re: Janelle Woodfill, 4242 River Road South, Afton.  
Zoning Violation.

Please find enclosed a letter requesting the City to appeal conditions attached to an after the fact variance. Since this appeal affects the zoning violations it is important to have your comments and concerns prior to the appeal date set for December 13, 1994. Since our agenda packet is mailed December 7, 1994 I would appreciate having your comments by

that date. In your response please reference and copy applicable DNR rules including your appeal process.

Exhibit 48.

28. Shodeen contacted Wickstrom once she received the memo and informed him that the DNR was entitled to 20 days' notice of any such action, there was insufficient time available for the DNR to consider the action proposed, and that the prior permit was a final order and that any appeal time had expired.

29. On December 13, 1994, the Afton City Council met and approved the decks that had been constructed on the house. Exhibit 36, at 5-6. The City Council also tabled the application for a permit to renovate the accessory structure (detached garage) pending a submission of plans for the renovation to the City Council in April. *Id.* at 6, Exhibit 31. No plans had been prepared as to what was to be done to renovate the structure.

30. On April 3, 1995, the DNR contacted Wickstrom about the status of the decks and detached garage and Wickstrom stated that the City Council had approved the decks on December 13, 1994. Exhibit 1. Materials on the appeal were faxed on April 10, 1995, to the DNR and received by U.S. Mail on April 12, 1995. *Id.*

31. On April 18, 1995, Fecht wrote to Woodfill, informing her that the DNR had become aware of the December 13, 1994 permit approval meeting and the action taken on that date. Fecht wrote that the City had not informed the DNR of the action until April, 1995, and that the DNR was required to certify any action for compliance with the Wild and Scenic Rivers Act. Exhibit 32. Any action to be taken at the April meeting of the City Council would also be reviewed. *Id.* The letter requested that any information or plans considered at the December 13, 1994 meeting be sent to the DNR for consideration. *Id.*

32. On April 18, 1995, the Afton City Council met and approved the plan for renovating the detached garage. The discussion by the council members indicated confusion as to the procedural posture in which the appeal was brought. Some council members believed that a plan had been approved and only final approval was needed. Other council members believed that no plan had been submitted for approval before this meeting and building code deficiencies were present. Exhibit 37. Wickstrom told the City Council that the DNR had not communicated its concerns about this project. *Id.* at 1. He neglected to inform the City Council that the DNR had objected to all parts of Woodfill's application and that the DNR had objected to not being notified in a timely fashion of the December 13, 1994 meeting. Wickstrom did not mention the July 21, 1993 meeting where the DNR had expressed its desire that the City act to remove the decks and the detached garage. There is no evidence that Wickstrom gave the DNR notice of the April 18, 1995 meeting or the matters to be considered at that meeting.



32. On May 2, 1995, Ogbazghi Sium, Land Use Management Supervisor for the DNR, wrote to the City Council to inform them that the December 13, 1994 decision on the decks would not be certified as being in compliance with the Wild and Scenic Rivers Act. Exhibit 1. The letter explained the reasons for the decision, the history of the construction, and the appeal process. The letter also stated:

We have not yet received the final decision on the second part of the applicant's proposal for this property relating to the reconstruction of the substandard detached garage. The December 13, 1994 minutes reflected that a plan would be presented to the Council for approval by the April 1995 meeting. It is our understanding that the minutes of that meeting were typed in a prompt manner by April 21, 1995. Over ten days have already passed and the DNR has not yet received notice of the final decision and accompanying materials should be sent to us as soon as possible so that the review and certification can occur in a timely fashion.

Exhibit 1, at 4.

33. On April 28, 1995, the DNR received the final decision approving renovation of the detached garage by facsimile transmission. Exhibit 2. The materials were received by U.S. Mail on May 3, 1995. *Id.* On May 18, 1995, Sium wrote to the City Council and informed them that the renovation of the detached garage was so extensive that it constituted new construction for which a variance would be required. Further, since the condition on the construction of the attached garage required Woodfill to remove the detached garage, there was a further reason to not certify the proposed reconstruction. *Id.* at 4. The process for bringing an appeal to the DNR's decision was described in the letter. *Id.* at 5.

34. The plan for renovating the detached garage would require a new layer of asphalt shingle on the existing roof, adding roof trusses to support a minimum 30 pound load, replacement of all the exterior wall structure above the foundation, rebuilding the cracked and sagging foundation walls, tying those walls together with a joist (which may require removal of the floor of the second story of the structure), replacement of the concrete footings under the foundation, repouring the concrete slab floor of the garage, and constructing a drainage system around the exterior foundation walls. Exhibit 45. The existing windows would be retained. *Id.*

35. On May 23, 1995, Woodfill filed an appeal from the DNR's refusals to certify the proposed construction for the detached garage and the construction of the decks, along with the necessary surety bond. Exhibit 3.

36. On December 24, 1996, the Commissioner issued his Notice of and Order for Hearing, setting the hearing in this matter for February 12, in Afton. The Notice was published in the Oakdale/LakeElmo Review, a qualified newspaper in Washington County, on January 8 and January 15, 1997. Ex. 6. Notice was also published in the EQB Monitor on January 13, 1997. *Id.*

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over the permit application herein pursuant to Minn. Stat. §§ 14.57, 103F.311, and 103F.351 and Minn. Rule 6105.0540.
2. All relevant substantive and procedural requirements of law and rule have been fulfilled.
3. Any of the foregoing Findings of Fact more properly considered Conclusions of Law are hereby adopted as such.
4. Applicant's lot is subject to the limitations of the Lower St. Croix Ordinance due to its location relative to the river.
5. The Department's denial of certification of the permit allowing decks added by the Applicant is appropriate and timely. Applicant has not shown that a hardship exists to support a variance due to egress requirements. Applicant controlled the process of establishing the interior layout of the house and could have chosen another option to meet the requirement that would not require a variance.
6. The detached garage is "a substandard structure [that] needs replacing due to destruction, deterioration, or obsolescence" within the meaning of Minn. Rule 6105.0370, subp. 11.D.
7. The replacement of the detached garage must comply with the dimensional standards for new construction under the Saint Croix Riverway Ordinance.
8. There is no location on Woodfill's lot which complies with the dimensional standards of the ordinance.
9. The impossibility of meeting the dimensional standards for a new garage does not constitute a hardship, since the Applicant has already received approval and constructed a new, larger garage on the lot.
10. The Department's denial of certification of the permit to renovate the detached garage is appropriate and timely. The variance allowing the new garage expressly required the destruction of the detached garage by a certain date. Applicant's failure to appeal the requirement renders it final and the matter cannot be revisited in a later permit process.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

That the Commissioner DENY certification of the proposed renovation of the detached garage as failing to comply with the Wild and Scenic Rivers Act and DENY certification of the decks already constructed on the property.

Dated this \_\_\_\_\_ day of June, 1997.

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RICHARD C. LUIS  
Administrative Law Judge

Reported: Tape Recorded. No Transcript Prepared.

#### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

#### MEMORANDUM

Woodfill's property is located along the lower St. Croix River and falls under the jurisdiction of the DNR by operation of the Lower Saint Croix National Scenic Riverway rules. Minn. Rule 6105.0370, subps. 6 and 7, require any permit issued for grading, filling, or excavating to not alter any slope greater than 12 percent where erosion or visible scars may result. When Woodfill initially applied for a building permit, she did not describe in any fashion how the work would affect slopes on her property. Upon seeing the impact of the work on the land, the DNR and the City issued an order to stop the construction.

Woodfill maintains that the City had a duty to inform her of all the standards pertaining to her property. There is no such duty. The rules governing excavation in the shoreland zone of the lower St. Croix are longstanding and unambiguous. The building permit Woodfill was issued was expressly conditioned on all the requirements of the Scenic River Ordinance being met. The landowner bears the responsibility to comply with the conditions on the building permit as well as the applicable rules and statutes.

Woodfill treats the issuance of the first permit as dispositive of her right to construct the garage in the size and location she had originally chosen. The record, particularly the discussions of the City Council, demonstrates that a number of options were considered as potential responses to the situation arising because of excavation into the bluff. Legal action could have been pursued to void the permit and have the

bluff restored, the Department could have supported modification of the permit to provide for a smaller garage, or a variance could be granted to move the garage footprint closer to the river. The DNR chose to support moving the garage closer to the river, although such support of variance by the DNR is extremely rare. Woodfill's situation was considered at the time of the after-the-fact variance and she received the best possible outcome by being allowed to complete her garage in the dimensions she originally planned.

Woodfill asserts that she relied to her detriment upon statements by the City Inspector in buying the property and renovating the structures on it. The Inspector informed Woodfill, before any action was taken, that the DNR would not allow any construction on the detached garage. Woodfill then proposed to build a large garage adjacent to the house that was approved, and an after-the-fact variance was granted, despite violating the grading and excavation rules. At the time of the granting of the after-the-fact variance, and perhaps due to concerns that there would be future problems, the City Council added a condition to the permit that the detached garage be demolished by June 15, 1990. Woodfill testified that she informed the Inspector that she did not agree to the addition of that condition and she wanted to revisit the issue with the City Council. However, no appeal was taken to the permit that was issued. The permit became final and nonappealable thirty days after the final approval by the DNR by operation of Minn. Rule 6105.0540, subp. 3E.

The decks built by Woodfill were not on the original plan that was submitted to obtain a permit. As soon as the DNR visited the site, the existence of "board ribbon" (to which a second story deck would be attached) was noted and Woodfill was informed that a variance would be required and the permit would have to be amended to allow a second story deck on the riverward side of the house. The DNR does not approve of such structures as part of its policy in applying the Lower St. Croix River Ordinance, because they tend to become enclosed over time and create "creep" toward the river.

Woodfill argues that the Department cannot require a variance for the construction of a second-story deck because the "footprint" of the deck is no larger than the landing that existed originally at the front door of the house. This argument fails to consider that any new construction may not go higher than what was there before. See Minn. Rule 6105.0530, subp. 2C. Woodfill recognized this implied requirement in the original proposal for the house, which bears the notation "existing roof line." Exhibit 39 (1) and (2). Extending the height of the landing, which went no higher than the bottom of the front door, up to the middle of the second floor, violates the limitation applied by DNR in administering the Lower St. Croix Ordinance. The difference between the drawings submitted and the construction as completed demonstrate that the addition of a second story deck and a walkway from the landing to the roof of the garage changes the entire appearance of the house. A variance is required for this construction.

The first floor deck does not fit within the footprint of the landing that existed before the renovation. Woodfill argues that, since the first floor deck does not go nearer the river than the attached garage, the deck is no less substandard than the garage and

must be allowed. This argument completely ignores the fact that a variance was expressly granted to move the attached garage eight feet closer to the river. The zoning system, intended to control construction in a shoreland area, would be rendered meaningless if every variance granted could be used to justify work expressly disallowed in that same variance process.

The action taken by the City Council on December 13, 1994, approving a variance for the decks as constructed, is asserted by Woodfill to estop the DNR from denying certification. The DNR received insufficient prior notice of the action before the City Council to comment upon it before the Council approved the variance. There is no requirement for the DNR to participate in variance proceedings prior to approval of a variance by the local authority. See *a/so* Findings 27 and 28. The rule governing certification requires that the local authority notify the DNR within 10 days of its final decision. Minn. Rule 6105.0540, subd. 3B. The DNR is obligated to act within 30 days of being notified of the final decision or the final decision is certified by default. Minn. Rule 6105.0540, subd. 3D.

There is no evidence that the DNR received notice of the final decision of the City Council taken at the December 13, 1994 meeting prior to the April 10, 1995 date referred to by the DNR's May 2nd letter of denial. Exhibit 1. The failure of the City Council to notify the DNR before April 10, 1995, means that the DNR's time to respond did not begin to run until that date. The DNR's denial of certification of the variance for the decks on May 2, 1995 is therefore timely.

Regarding the detached garage, the permit condition requiring its removal became final, as discussed above. There is no basis for revisiting that issue at a later City Council meeting. Even if there were a basis for rescinding Woodfill's obligation to remove the structure, the extent to which the detached garage is to be rebuilt renders the action violative of the rules governing construction in this area. Minn. Rule 6105.0370, subp. 11 governs substandard structures. Item D of that subpart states that "if a substandard structure needs replacing due to destruction, deterioration, or obsolescence, such replacement shall comply with the dimensional standards of a Saint Croix Riverway Ordinance." Minn. Rule 6105.0370, subp. 11.D.

The plans for the detached garage make it plain that every major portion of the structure is being renovated. The portions that are being retained are so minimal as to make their retention a burden on the work that must be performed. When the project was discussed at the December 13, 1994 meeting of the City Council, there were jokes as to whether the structure would collapse over the winter. Exhibit 36, at 6. The condition of the detached garage bears out the basis in fact behind the humor. The foundation walls have slipped and are in danger of collapse. The findings made in 1990 concluded that the garage is a "potential hazard to the City." Exhibit 24, at 2. The construction work required to bring the detached garage to a level fit for occupancy constitutes replacement. Under Minn. Rule 6105.0370, subp. 11.D, activity constituting replacement must meet the 200 foot setback requirement of Minn. Rule 6105.0380,

subp. 5. The structure is within 200 feet of the St. Croix, so its proposed “renovation” is prohibited.

The detached garage is built into a rise of land, which is partially supporting the buckled foundation wall. Woodfill argues that the DNR has not shown that the detached garage is located on a bluff and therefore the construction should not be prohibited. The basis for denying certification for the construction relating to the detached garage is not its location on a bluff, but rather the requirement that the garage be removed in the 1990 permit and the fact that the construction would violate the setback requirement in Minn. Rule 6105.0380, subp. 5. Evidence regarding the slope on the land around the detached garage is immaterial.

Woodfill has maintained at various times that to remove the detached garage would constitute a hardship. Thus, a variance to allow the structure to be “renovated” would be appropriate. Hardship occurs when a site cannot be used for its normal and ordinary purpose due to zoning restrictions. Minn.Stat. § 462.357, subd. 6(2) In this case, the lot is being used for a residence with a garage. This is the normal and ordinary use of the property. Having one accessory building instead of two is not a hardship. Further, when Woodfill was seeking guidance as to what permits would be required, the City Inspector informed her that nothing could be done with the detached garage. It was at that time that the decision to build an attached garage was made. The new construction was predicated on the inability to do anything with the existing garage. Exhibit 8. Any hardship that Woodfill experienced was resolved by approval of a variance for construction of a larger, two-car garage.

The Department has demonstrated that the denials of certification of variances are appropriate based on the facts of this matter. The Applicant has not shown that a hardship exists or that the proper procedure for obtaining DNR certification of variances has been followed for the two variances she obtained in 1994 and 1995. Therefore, the Administrative Law Judge recommends that the Applicant’s appeal be DENIED.

R.C.L.